



Brian Schweitzer
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender
Randi Hood

44 West Park Street Butte, Montana 59701

406.496.6080 (fax) 406.496.6098

Name: _____

EXHIBIT 18

— DRAFT —

MEMORANDUM OF UNDERSTANDING

The Office of the State Public Defender (OPD) intends to contract for public defender services with those various private practitioners who have provided a summary of their education and experience.

The undersigned attorney acknowledges that s/he has read the Standards of Counsel Representing Individuals Pursuant to the Montana Public Defender Act and that s/he will abide by said Standards. The Standards are currently posted on the OPD website (<http://publicdefender.mt.gov/>) and are available in hard copy in each regional public defender office.

The undersigned submits that s/he is qualified to provide effective assistance of counsel in the following cases:

1. Type of case (Please *initial* one or more)

Felony _____
Misdemeanor _____
Post-Conviction Proceeding _____
Child Abuse and Neglect _____
Involuntary Commitment:
 Mental _____
 Adult _____
 Minor _____
 DD _____
 Alcohol _____
 Youth Court _____
Guardianship/Conservatorship Proceeding _____

2. Court/County (Please indicate one or more)

District Court _____ Justice Court _____

Specify County or Counties:

— DRAFT —
OPD MOU 7/26/2007

3. **Court/City** *(Please indicate one or more)*

Municipal Court _____ City Court _____

Specify City or Cities:

It is understood and agreed between the undersigned and OPD that OPD is not obligated to assign any specific number of cases to the undersigned, nor is the undersigned obligated to accept any case offered for assignment. Cases will be assigned by a Regional Deputy Public Defender (RDPD) or the Chief Appellate Defender in accordance with your qualifications as outlined above and the quality of work performed. The RDPD or Chief Appellate Defender shall supervise and evaluate the performance of your service, as well as monitor your caseload. The type and number of cases assigned to you will be determined by your qualifications as set forth above, by your performance and by your overall caseload which shall include the amount of private practice engaged in outside this agreement. OPD shall establish a reporting protocol on all cases assigned, and by signing this Memorandum you are agreeing to abide by said protocol.

It is understood and agreed that in cases involving appeals or conflicts, the Chief Appellate Defender or the RDPD will make assignments from the same pool of attorneys who have signed this agreement.

It is understood that OPD has full time support services available, such as paralegal and investigator services, and it is agreed by the undersigned that s/he will have access to the same and will use the same whenever practical and possible.

It is understood and agreed that the undersigned shall provide public defender services according to the attached Rate Schedule (Attachment A). It is further understood and agreed that all costs exceeding \$200.00, i.e., experts, witnesses, transcripts, etc. **must** be pre-approved per the attached OPD Pre-Approval of Client Costs policy (Attachment B). **Post-approval of costs will not be granted except in extraordinary circumstances.** All pre-approved contracted professional services must be invoiced by said professional directly to OPD.

It is understood and agreed that the undersigned shall submit an itemized claim on the appropriate claim form provided by OPD, posted on OPD's web site at www.publicdefender.mt.gov. Claimant must submit a monthly claim by the tenth of the month following the month in which costs were incurred. Claims submitted more than 45 days from the last day of the month of service **will be denied**. Hourly rates shall be broken down into units of one-tenth of an hour (0.1 hour or six minutes). Each form **must** contain the case number as **assigned** by OPD and shall be supported with daily case logs. It is understood and agreed that the undersigned will follow all procedures in the attached Contractor Payment Process (Attachment C), which describes in detail the claim submission and payment process.

The undersigned agrees to complete twenty hours of continuing legal education within each calendar year in courses relating to public defender practice or representing persons whose liberty is at risk as a result of state-initiated proceedings, from courses offered or approved by OPD. The undersigned further agrees to comply with all other training requirements established by OPD's Training Coordinator.

This agreement shall be for a term of one (1) year. Upon the termination of said term, this agreement may be modified or extended for a like period by agreement, or terminated by either party here. Finally, it is understood and agreed that this Memorandum of Understanding may be terminated by OPD if it is determined that the undersigned is not providing effective assistance of counsel or that claims billed by the undersigned are consistently not in conformity with other providers or with OPD policies and procedures.

My signature below indicates my acceptance of the above stated terms and conditions.

Name (Please Print)

Address

Telephone No.

Email Address

Signature

*(Note: Stamps, photocopies and faxes are **not** accepted)*

Date: _____

Approved by:

Lawrence A. Murphy
Contract Manager

Date: _____

OPD Use:

Completed Summary of Education and Experience Received *(Date)*: _____

MOU Received *(Date)*: _____

Region(s) _____

Notified _____

MOU ATTACHMENT A

RATE SCHEDULE

Attorney time	\$60 per hour
Travel time	\$30 per hour
Mileage	To be paid at the current state rate (.485 cents per mile as of July, 2007) <i>(For services rendered outside a fifteen (15) mile radius of the principal place of business.)</i>
Basic Motions	Maximum .2 hour (two tenths) <i>(Includes, but is not limited to, continuance, discovery requests, notices of appearance, etc.)</i>
Office Stipend	\$25 per month <i>(OPD will not be responsible for payment of any office costs, i.e., telephone, copying, fax or postage expenses over the aforementioned stipend unless pre-approved.)</i>

MOU ATTACHMENT B
Office of the State Public Defender
Administrative Policies

Subject: Pre-Approval of Client Costs	Policy No.: 125
Title:	Pages: 3
Section:	Last Review Date:
Effective Date: 5-1-07	Revision Date: 7-26-07

1.0 POLICY

- 1.1** The Office of the State Public Defender (OPD) requires pre-approval of all client costs expected to exceed \$200 per task in all cases.
- 1.2** All cases involving salaried (FTE), contract and conflict attorneys, including appellate cases, are subject to this policy.

2.0 DEFINITIONS

- 2.1** Client costs, hereinafter called costs, shall be defined as all monies to be expended in the preparation, investigation and litigation of public defender cases.
- 2.2** A task shall be defined as work performed by a nonattorney in the preparation, investigation and litigation of a public defender case.

3.0 PROCEDURE

3.1 Costs Between \$200 and \$999

- 3.1.1** The pre-approval process for all costs expected to exceed \$200 per task shall commence with the completion of the Request for Pre-approval of Costs form (Attachment A) by the attorney assigned to the case.
- 3.1.2** The form must be signed and dated by the requesting attorney and forwarded to one of the following persons for approval:
 - 3.1.2.1** For non-conflict cases assigned to an FTE or contract attorney, submit the request to the Regional Deputy Public Defender (RDPD) assigning the case; or
 - 3.1.2.2** For conflict cases, submit the request to the Training Coordinator; or
 - 3.1.2.3** For appellate cases, submit the request to the Chief Appellate Defender. Appellate transcript requests are exempt from this policy.
- 3.1.3** The RDPD, Training Coordinator or Chief Appellate Defender shall review the request and shall explore alternative, fiscally responsible options with the attorney before approving or denying said request by checking the appropriate box on the form and then signing and dating the same.
- 3.1.4** The original form is to be retained by the person approving or denying the request and a copy thereof forwarded to the requesting attorney.

3.2 Costs Equal to or Exceeding \$1000

- 3.2.1** Regional Deputy Public Defenders will submit requests for costs expected to exceed \$1000 to the Central Office for approval.

- ## 4.0 CLOSING

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

State of Montana
Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS

All client costs exceeding \$200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys (*Eric Olson, 610 N. Woody, Missoula MT 59802*)
- The Chief Appellate Defender in appellate cases (*Jim Wheelis, PO Box 200145, Helena MT 59620*)

Requesting Attorney's Name

Date

Case Name

OPD Case Number

Task Provider's Name

Estimated Cost of Task

Short Justification for Task and Cost: _____

Requesting Attorney Signature

Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see above).

Authorized Signature ☐ Approve ☐ Deny

Date

(Regional Deputy Public Defenders must complete the next section and submit to the Central Office for approval if the request exceeds \$1000. The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.)

I certify that I have reviewed the request which exceeds \$1000; have explored alternative, financially responsible options with the requesting authority, and recommend that the request be ☐ Approved ☐ Denied

Authorized Signature

Date

For Central Office Use Only—Non-Conflict Requests Exceeding \$1000

☐ Approve ☐ Deny

Contract Manager/Chief Public Defender

Date

OPD May, 2007

MOU ATTACHMENT C

Contractor Payment Process

This procedure applies to all vendors (attorneys, investigators, mental health providers, etc.) providing services to the Office of the State Public Defender (OPD). Please note that attorneys are not to pay for other professional services and then request reimbursement—those services are to be billed directly to OPD by the non-attorney service provider.

*Conflict, non-conflict, and appellate matters are to be billed separately **with original signatures** on each claim, using the appropriate forms (the most current forms are always found at <http://publicdefender.mt.gov/forms.asp>). Conflict claims are to be billed directly to the Central Office. Non-conflict claims are to be submitted to the Regional Deputy Public Defender assigning the case. Appellate claims are to be submitted to the Chief Appellate Defender.*

Faxes, photocopies and signature stamps are not accepted.

Procedure

1. Claims for payment of services are to be submitted to the appropriate office by the tenth of the month following the date of service (i.e. a vendor providing services to OPD during the month of June must submit a claim to the appropriate OPD office by July 10).
2. OPD will pay properly executed and approved claims 30 days from receipt of the claim, beginning when the claim is date stamped by the first OPD office to receive the claim. **See the checklist below for important information regarding how to ensure that you are submitting a “properly executed claim.”**
3. Claims submitted to regional or appellate offices will be reviewed by the appropriate individuals to determine that the claim is valid and that services were provided in accordance with OPD and state policies and procedures. Once the claim is approved by the regional or appellate office it will be forwarded to the Central Office for final approval and payment.
4. Claims that are disputed by the regional or appellate office require written notification to the vendor explaining the dispute. The 30 day payment clock stops until the dispute is resolved. Once the dispute is resolved the 30-day clock resumes. For example, an office receives a claim on July 10 and date stamps the invoice, beginning the 30 day clock. The date that OPD expects to make the payment would be August 8. However, if the office disputes the claim on July 12 (stopping the payment clock) and resolves the dispute on July 15 (resuming the payment clock), the new payment date would be August 11.
5. Claims received in the Central Office (conflict claims and claims forwarded from regional or appellate offices) are reviewed for completeness using the checklist.
6. If all items on the checklist are complete, conflict and regional claims are forwarded to Contract Manager Larry Murphy for review. Appellate claims are forwarded directly to accounting.
7. Charges disputed by the Contract Manager will also be conveyed in writing. The 30 day payment clock stops until the dispute is resolved, as in item 4.
8. Disputed or incomplete claims are placed in a pending file until the issue is resolved. Contract management will follow up on a weekly basis to attempt to resolve pending claims.
9. Approved claims are forwarded to accounting for payment.
10. Payments are scheduled by due date—30 days from receipt in the Regional/Appellate office, (or Central Office for conflict cases) plus additional days caused by disputes or other delays.

Checklist

1. Conflict, appellate and non-conflict cases must be submitted separately. Submit a separate claim for each region in which you've worked and send it to the appropriate regional office for approval.
2. Each claim must include the **correct** OPD number(s) as assigned by the regional or appellate office. **You must have an OPD number to be paid. Many claims are delayed because of incorrect or incomplete OPD numbers.**
3. Each claim must include an itemization of the hours worked by case by date, summarized by OPD number on the appropriate claim form. Attorneys are to bill in six minute increments, (.10 equals six minutes). All vendors must outline completely the task billed.
4. Bill the actual amount of time worked on each task, not a preset amount for each task, *i.e.* every telephone call is **not .2**.
5. You may bill up to \$25 for your office costs such as postage, copies and telephone.
6. You may bill for collect calls from clients who are incarcerated. You must attach your phone bill and itemize those costs on the claim.
7. All claims must include **original** signatures, preferably in blue ink. Signature stamps, copies and faxes are not accepted. All signatures must be **on the same page as the total amount** of billing.
8. Attach back-up documentation including:
 - a. **Pre-approval form for costs exceeding \$200**
Many claims are rejected because pre-approval forms are not attached to the claim or the claim amount exceeds the pre-approved amount.
 - i. Claims will not be approved if the amount exceeds the amount of the pre-approval. Amounts exceeding the original estimate require an additional pre-approval which must be included with the claim.
 - ii. Work that is billed incrementally must have a copy of the pre-approval attached to each individual claim indicating the amount billed to date against the pre-approved amount. The original pre-approval should be retained in the regional office until the final claim is submitted.
 - iii. A pre-approval form is not a substitute for a claim form! The pre-approval, a detailed itemization of the actual work performed **and** a claim form are all required for payment.
 - b. **Travel forms**
 - i. Must include the purpose of the trip **and** the OPD number(s).
 - ii. Mileage is to be calculated at the approved state rate, currently .485 cents per mile. Do not round!
 - iii. Must include departure and arrival times if reimbursement for meals is requested (at state per diem rate only). Meal receipts are not required.
 - iv. Motel receipts must be attached.
 - v. Make sure the amount is transferred to the face of the claim form, **by OPD number**.
 - vi. The travel form should be directly behind the claim form.
 - c. **Detailed itemization of charges.**
 - d. **Receipts for any other miscellaneous costs must be attached.**
9. Ensure that the claim total appears on the top page, with back-up documentation directly behind the claim form.
10. Payment is made from ORIGINAL documents only—not faxes or photocopies. The original documents will be returned if they are incomplete.